

New Section 155(3)(A)(ii) extends the definition of "discriminatory tax" to include any levy by a State or local government that taxes electronic commerce in a manner that results in a different tax rate being imposed on electronic commerce when compared to a transaction that occurred through another means.

(a) No taxes on Internet-unique property, goods, services, or information

Taken together, new Section 155(3)(A)(i) and (ii) mean that property, goods, services, or information that is exchanged or used exclusively over the Internet—with no comparable off-line equivalent—will always be protected from taxation for the duration of the moratorium. Examples of Internet-unique property, goods, services, or information include, but are not limited to, electronic mail over the Internet, Internet site selections, Internet bulletin boards, and Internet search services.

(b) No new collection obligations

New Section 155(3)(A)(iii) states that a tax on electronic commerce is discriminatory if it imposes an obligation to collect or pay a tax on a different person or entity that would be the case if the transaction were accomplished without using the Internet, such as over the telephone or via mail-order. For instance, a tax is not discriminatory if the obligation to collect and remit it falls on the vendor whether the sale is made off-line or online.

This definition also includes taxes that impose tax collection obligations on persons other than the buyer or seller in an Internet transaction. For example, a tax is discriminatory if it imposes tax collection or tax reporting duties on Internet access providers, telephone companies, banks, credit card companies, financial intermediaries, or other entities that might have access to a customer's billing address, since these collection and reporting obligations are not imposed in the case of telephone, mail-order, or retail outlet sales.

(c) No classification of an ISP as a phone company

New Section 155(3)(A)(iv) states that a tax on electronic commerce is discriminatory if it establishes a classification of Internet access provider, and imposes a higher tax rate on this classification than on similar information services delivered through means other than the Internet. The term "information services" is expressly defined in new Section 155(5) and in Section 3(2) of the Communications Act of 1934 to exclude "telecommunications service." As a result, neither telephone companies nor similar public utilities, as such, may be "providers of information services delivered through other means" within the meaning of new Section 155(3)(A)(iv). For this reason, the fact that a telephone company or similar public utility service pays tax at the same or a higher tax rate than an Internet access provider will not prevent the tax on the Internet access provider from being discriminatory. In this way, new Section 155(3)(A)(iv) effectively serves to prohibit States and localities from classifying a provider of Internet access as a telephone company or similar public utility service—for example, for the purpose of applying a business license tax—if such classifications are subject to higher tax rates than other non-Internet information services.

(d) No New "Nexus"

The definition of "Discriminatory tax" in new Section 155(3)(B) is intended to prohibit States and localities from using Internet-based contacts as factor in determining whether an out-of-State business has "substantial nexus" with a taxing jurisdiction.

This is intended to provide added assurance and certainty that the protections of

Quill v. North Dakota, 504 U.S. 298 (1992)—including its requirement that substantial nexus be determined through a "bright-line" physical-presence test—will continue to apply to electronic commerce just as they apply to mail-order commerce, unless and until a future Congress decides to alter the current nexus requirements.

In this way, the Act intends to encourage the continued commercial and non-commercial development of the Internet. New Section 155(3)(B) is a direct response to testimony from a State tax administrator, who offered his view to Congress at a July 1997 hearing that the *Quill* protections provided to remote sellers without a substantial in-State physical presence should not apply to businesses engaged in electronic commerce. During the hearing, the tax administrator acknowledged that if a resident of his State were to use the telephone to purchase a good from an out-of-State vendor, his State would not be permitted to impose its tax collection obligations on that vendor unless the vendor otherwise had a substantial in-State physical presence. The tax administrator further testified, however, that if instead the Internet were used to place the order, his State would attempt to require the out-of-State vendor to collect taxes. His rationale was that the flow of data over the Internet into his State, the "presence" of a web page on a computer server located in-State, of the supposed "agency" relationship between the remote seller and an in-State Internet access provider should be enough to give the remote seller a substantial physical presence in his State.

The Act rejects this approach. The promotion of electronic commerce requires faithful adherence to the U.S. Supreme Court's clear statement in *Quill* that a "bright-line" physical presence—not some malleable theory of electronic or economic presence—is required for a State to claim substantial nexus. Even without the Act, the courts, in light of *Quill*, are likely to view such arguments by State tax administrators with great skepticism. But the Act provides clarity and far greater certainty by specifically outlawing State or local efforts to pursue aggressive theories of nexus. This should result in decreased litigation which will benefit States, localities, taxpayers, and an often overworked court system.

New Section 155(3)(B)(i) defines "Discriminatory tax" so as to make it clear that Congress considers the creation or maintaining of a site on the Internet to be so insignificant a physical presence that the use of an in-State computer server in this way by a remote seller shall never be considered in determining nexus.

New Section 155(3)(B)(ii) defines "discriminatory tax" so as to prohibit a State or political subdivision from deeming a provider of Internet access to be an "agent" of a remote seller. Internet access providers commonly display information on the Internet for remote sellers, and often maintain or update the remote seller's web page. Even if the Internet access provider provides these and other ancillary services (such as web page design or account processing) on an in-State computer server, the provider should not be considered an agent for purposes of taxation.

B. No expansion of tax authority

The Act is meant to prevent Internet taxes, not proliferate, encourage, or authorize them. Section 7 of H.R. 4105 expressly states, therefore, that nothing in the Act shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed on the date of enactment of the Act.

Section 7 is specifically intended to make it clear that the Act does not, directly or in-

directly, expand the definition of "substantial nexus" beyond existing judicial precedent and interpretations of the Commerce Clause of the United States Constitution. It is intended to negate any possible inference that the Act might subvert existing requirements that interstate activity have a "substantial nexus" (determined through a "bright-line" physical-presence test) with the taxing jurisdiction, and that taxes on such activities be fairly apportioned, be fairly related to the services provided by the jurisdiction, and not discriminate against interstate commerce.

It is fully intended that a State or local tax not barred by the provisions of this Act shall not be valid if such tax would otherwise constitute an undue burden on interstate or foreign commerce.

TRIBUTE TO THE ISRAEL 50TH
ANNIVERSARY GALA HONOREES

HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 14, 1998

Mr. SHERMAN. Mr. Speaker, I rise today to pay tribute to an outstanding collection of individuals for their unwavering commitment to the Jewish Federation of Los Angeles. I would like to take this opportunity to acknowledge the 1997–1998 Jewish Federation Officers Herbert M. Gelfand, Irwin Field, Todd Morgan, Lionel Bell, Carol Katzman, Elaine Caplow, Chuck Boxenbaum, Stuart Buchalter, Jonathan Cookler, Rabbi Harvey J. Fields, Howard I. Friedman, Dr. Beryl Gerber, Meyer Hersch, Harriet Hochman, Evy Lutin, Annette Shapiro, Terri Smooke, Carmen Warschaw, David Wilstein, Mark Lainer, Edna Weiss, David Fox, and Newton Becker for their innovative leadership over the past two years.

The Talmud states "He who does charity and justice is as if he had filled the whole world with kindness." In the spirit of these words, these leaders have infused our community with great kindness, purpose, and pride. Their work strongly represents the Judaic tradition of generosity and concern for others. Their exceptional leadership has been instrumental in laying the foundation for a strong and cohesive Jewish community in the City of Los Angeles.

Mr. Speaker, distinguished colleagues, please join me today in congratulating these leaders for their tremendous dedication to the Jewish Federation.

TRIBUTE TO HIROSHI "HEEK"
SHIKUMA

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 14, 1998

Mr. FARR of California. Mr. Speaker, I rise today to honor a gentle man, Hiroshi "Heek" Shikuma, whose superior abilities and foresight were instrumental in developing an industry that has become a mainstay of the area economy, while his wisdom and gentleness made him a leader in the spiritual community. Mr. Shikuma passed away this past February.

Mr. Shikuma was born, raised, and educated in the Pajaro Valley. During World War

II, he served in the United States Army's Japanese-American 442 Regiment, receiving a Purple Heart after being wounded in combat. Upon his return, Mr. Shikuma began farming in the rich soils of the Pajaro Valley. At that time, local farmers were just becoming aware of the value of strawberries as a crop. Strawberries were selling for an incredible twenty cents a pound in San Francisco. Shikuma Bros. Inc. was established when Heek was joined by his two older brothers, Mack and Kanji. Through hard work and dedication the strawberry industry prospered. The Shikuma family founded the Central California Berry Growers Association, a marketing cooperative that enabled growers to optimize the value of their product. Today the cooperative is known as Naturipe. Mr. Shikuma has been active on the board since 1949, for a time presiding as its president. In 1989, Mr. Shikuma was honored by the Japanese American National Museum and Los Angeles County for his contributions to the California strawberry industry, which now produces more than 70 percent of the nation's berries. In 1993, the Santa Cruz County Farm Bureau named Shikuma Bros. the "Farm Family of the Year."

As successful as Mr. Shikuma was in his business enterprises, he found the time to be a supporter of the community in which he lived. He was a long-time member of the Japanese American Citizens League, and served as president. His family founded the Japanese Presbyterian Church which became the Westview Presbyterian Church in Watsonville. Mr. Shikuma was remembered by his daughter, Nancy, as a "man of high integrity who extended his hand to others in need of help. He always put his family first and never spoke a harsh word to anybody."

Our thoughts are with the family, his wife of fifty years, Chiyeko, his two daughters, Nancy and Anne, his son, Ted, his brother, Mack, and sister, Emi, his grandchild and many nieces and nephews. His loss will be felt profoundly, but the mark he has left on the community is indelible. Heek Shikuma provides a magnificent example of the best in humankind with his special blend of intelligence, diligence and kindness.

TRIBUTE TO HINDO TEMPLE OF
ST. LOUIS

HON. JAMES M. TALENT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 14, 1998

Mr. TALENT. Mr. Speaker, I rise today to pay tribute to the Hindu Temple of St. Louis and recognize their efforts to celebrate Kumbhabhisheka Mahotsava. I wanted to take this opportunity to enclose the text of some brief remarks I made on Friday, July 3, 1998, which recognizes this outstanding occasion.

Since the Hindu Temple of St. Louis opened in 1991, it has become an integral part of the community. The recent expansion program has resulted in a spectacular temple with architectural roots in the 500-year-old temples of India.

I congratulate the Temple and the community on your success and am honored to share in the excitement of Kumbhabhisheka Mahotsava, the consecration of the Temple. The traditions and rituals steeped in centuries

of custom make this a unique and special opportunity for the St. Louis Hindu community.

I wish you peace and joy on this great occasion. May God bless you and your families as you share in the beauty of Kumbhabhisheka.

Mr. Speaker, I ask that you and my colleagues join congratulating the Hindu Temple of St. Louis and wish them all the best on this very special event.

CELEBRATING THE THIRTY-FIFTH
ANNIVERSARY OF THE WEST ORANGE
FIRST AID SQUAD

HON. BILL PASCRELL, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 14, 1998

Mr. PASCRELL. Mr. Speaker, I would like to take this opportunity to highlight a momentous milestone for the West Orange First Aid Squad in West Orange, New Jersey. This July the squad will celebrate its 35th Anniversary in service to the public of West Orange.

In the late 1950s to early 1960s the Department of Civil Defense-Disaster Control (CD-DC) in West Orange began a series of residence training programs which focused on "Home Preparedness," fire safety, home protection, and elementary first aid. These sessions were very well attended. At every town function, the CD-DC would have the local boy Scout troop set up a first aid tent to care for minor injuries. For serious injuries, the fire department had an ambulance located at Fire Station #4 on Pleasant Valley Way. The personnel were not properly trained, and the equipment was lacking, but they did the best they could with what was available.

At this time, at a monthly CD-DC meeting a police auxiliary officer proposed creating a first aid unit. Information was gathered from the NJ Safety Council, and various township officials were contacted, resulting in the decisions that an emergency first aid unit should be created. After some debate, it was decided that it would be a separate volunteer organization. Volunteers were sought and a training program was started. Commissioner Edward Roos decided that the volunteers would be able to use the ambulance at station #4 if they passed their training.

The early 1960s saw all of the volunteers passing the first aid course. They were given a uniform of white coveralls with a special insignia. When it was realized that women too were taking the course, and a decision was reached that the squad would be an all-male operation, the women created an auxiliary called the Gold Cross which was responsible for raising money for the squad.

In 1963, the squad was officially recognized by the township as a separate volunteer medical unit and was granted a charter for "Primary Medical Emergency Medical Service." In the 1970s the number of volunteers grew and the squad was moved to a larger location at 25 Mount Pleasant Place, where it is still located today.

Today, the West Orange First Aid Squad continues to provide free emergency medical care to the Township of West Orange. It is one of the few squads in New Jersey to offer an in-house, 24-hour volunteer crew. Its volunteers go through an extensive training program, and work with the fire department in life threatening emergencies.

Mr. Speaker, I ask that you join me, our colleagues, and the Township of West Orange, as we congratulate the West Orange First Aid Squad on its 35th anniversary and wish it the best of luck in providing service to its community in the years to come.

U.S. SANCTIONS POLICY

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 14, 1998

Mr. HAMILTON. Mr. Speaker, I would like to bring to the attention of my colleagues an important op-ed article on U.S. foreign policy sanctions, published in the June 19 edition of The Wall Street Journal. The article was written by Richard Haas of the Brookings Institution, who was a senior National Security Council official in the Bush Administration. Mr. Haas argues that unilateral sanctions are ineffective and costly, and he offers wise policy guidelines for future sanctions. The article follows:

SANCTIONS ALMOST NEVER WORK

Economic sanctions have never been more popular than they are now. Congress imposes them; the executive branch implements them; even state and municipal governments want to get into the act. More than 75 countries with over two-thirds of the world's population are subject to U.S. economic sanctions—whether aimed at discouraging weapons proliferation, bolstering human rights, deterring terrorism, thwarting drug trafficking, discouraging armed aggression, promoting market access, protecting the environment or replacing governments.

Sanctions are occasionally effective; they probably hastened the end of South African apartheid and constrained Saddam Hussein after the Gulf War. But the record strongly suggests that sanctions often fail or make things worse. Sanctions alone are unlikely to achieve foreign-policy objectives if the goals are ambitious or time is short.

Unilateral sanctions almost never work. Secondary sanctions—trying to compel others to join a sanctions effort by threatening sanctions against them—can seriously harm relationships with the secondary states. Sanctions have caused humanitarian suffering (Haiti), weakened friendly governments (Bosnia), bolstered tyrants (Cuba) and left countries with little choice but to develop nuclear weapons (Pakistan). From a domestic perspective they are expensive, costing U.S. businesses billions of dollars a year and many thousands of workers their jobs.

USE SPARINGLY

For these reasons the U.S. should use the weapons of sanctions sparingly if at all. Here are some principles policy makers and Congress should follow:

Avoid unilateral sanctions. The evidence is overwhelming that unilateral sanctions achieve little. Target countries can almost always find alternative sources of goods, capital and technology. For this reason, Washington should rethink its efforts against Cuba and should hold off on going it alone against Nigeria.

Resist resorting to secondary sanctions. It is an admission of diplomatic failure to punish friendly nations that don't comply with a sanction against a foe. It is also an expensive response. The costs to U.S. foreign policy, including relations with major trading partners and the World Trade Organization, almost always outweigh the potential benefits